Case Summary

Complaint against the Buildings Department for delay in taking follow-up action after serving a Demolition Order

The Complaint

The complainant lodged a complaint against the Buildings Department (BD) for delay in taking follow-up action after serving a Demolition Order on 14 May 1997 on the owner of the 9th floor and adjoining flat roof in Block A of a commercial building.

Opinions and Conclusion

2. According to records, several fires had broken out in the building causing deaths and injuries. There are four fire escapes in Block A of the building. However, some owners have divided their flats into a number of units and rented them out. The four fire escapes are located within four of these units. When these units are locked up, other people in the building cannot gain access to the fire escapes and have to make their way to the back staircase located farther away in Block B in case of emergencies.

3. The BD received a complaint in December 1996 that there was a complete lack of fire escape on the 9th floor of Block A. After inspection, the BD served a Demolition Order on the owner on 14 May 1997 requiring completion of improvement works to the fire escapes within 60 days.

4. On 11 August and 8 September 1997, the owner wrote to the BD informing the Department that improvement works had been carried out to one of the fire escapes in February that year. As to the three remaining fire escapes, the owner requested an extension of time to complete the improvement works on the ground that the tenancy agreements of the units had not yet expired. However, the BD did not turn down the application until 16 April 1998. The owner submitted to the BD plans for the improvement works to the fire escapes on 25 April 1998. In its reply dated 3 July 1998, the BD agreed in principle to the locations of the fire escapes shown on the plans, but refused to grant approval for the improvement works to the last fire escape to commence in 2000. The BD did not specify in its reply when all the improvement works should be completed.

5. The staff of the BD carried out inspections on 29 July and 23 October 1998 and confirmed that the owner had reinstated two fire escapes which were up to standard. The other one leading to the flat roof was too narrow and had yet to be widened.

6. According to the existing policy and guidelines of the BD, staff members of the Department would conduct a site inspection to check if the owner had completed the works specified in the Order upon expiry of the deadline. However, the BD revealed that owing to the large number of unauthorized structures in the whole of Hong Kong, their workload was very heavy and it was not possible to carry out an inspection immediately upon expiry of the deadline specified in an Order. Furthermore, the Golden Court fire in early 1998 had an impact on their daily work and caused delay in their replies to owners' applications for extension of time in completing the improvement works.

7. The BD stated that up to mid-October 1998, there were over 7 000 orders which had expired deadlines and needed to be followed up. The BD has given first priority to this backlog of cases, especially those

which pose an obvious danger to life or property. The staff of the Control and Enforcement Division are required to devote at least ¼ of their working time to follow up on these orders. A Building Safety Inspection Section has also been set up to carry out large scale clearances. As to manpower, the BD has been granted additional staff resources this year to clear dangerous appendages on external walls and their application for manpower to conduct more large scale clearances is pending approval.

8. This Office conducted a direct investigation on unauthorized building works in 1995 and came to the conclusion that the problem of unauthorized building works had reached an unmanageable magnitude and the 1988 Policy was obviously unsuccessful in containing the problem. Moreover, the Control and Enforcement Division of the BD lacked sufficient staff resources to carry out the Policy in a proactive manner. According to para. 7 above, the problem of unauthorized structures is still very serious and the BD is unable to deal with the backlog of cases effectively. In the present case, as fires had broken out in the building causing deaths and injuries, the BD should follow up promptly on complaints against obstruction of fire escapes. However, from the expiry of the deadline of the Demolition Order in July 1997 to April 1998, the BD had not taken any substantive action to ensure compliance with the Order. In the event of a fire, a tragedy might recur. On the basis of the above considerations, The Ombudsman concludes that this complaint is **substantiated**.

Recommendations

9. This Office notes that this complaint is not an isolated case. There are similar cases awaiting the BD’s attention. Therefore, The Ombudsman has made the following recommendations for consideration by the Director of Buildings :

(a) to take follow-up action on the improvement works to the remaining fire escapes as soon as possible to ensure compliance; and

(b) to consider requesting for additional staff to follow up on all the demolition orders the deadlines of which have expired.

Response from the Director of Buildings

10. The Director of Buildings points out that although there was no record in the relevant file to show that staff of the BD had any contact with the owner between 11 August 1997 and 16 April 1998, the owner had connected the two fire escapes in February 1998 before he received the letter dated 16 April 1998 from the BD refusing to grant an extension of time. Therefore, it can be deduced that BD staff had contacted the owner in connection with the Demolition Order before February 1998. Moreover, the degree of danger had been significantly reduced from imminent to potential after the two fire escapes were connected. In view of the above, the BD does not entirely agree to the conclusions of the report, but the Department will actively follow up on the case to ensure full compliance with the Demolition Order.

11. The BD states that improvement works to the remaining fire escape, i.e. the widening of the fire escape leading to the flat roof, had been completed. The BD has already given priority to clearing the backlog and staff of the Control and Enforcement Division are required to devote at least ¼ of their working time to follow up on orders the deadlines of which have expired. On the question of additional staffing, it is difficult to say when it can be implemented since the BD has to obtain approval. Nevertheless, the BD will make effective use of its resources to clear the backlog of cases.

Final Remarks

12. This Office holds the view that while the explanation offered by the BD might be credible, there is no file record to support that substantive action has been taken to follow up on the Demolition Order between August 1997 and February 1998. More importantly, the unauthorized structures pose great danger to the lives and properties of users of the building. The BD should inform the owner as soon as possible that his application has been turned down and strictly enforce the Demolition Order instead of allowing the owner to decide when to clear the unauthorized structures. Otherwise, it would be meaningless to specify a deadline in the Demolition Order. Under the circumstances, The Ombudsman is of the view that the conclusions of this investigation report should remain unchanged.

Office of The Ombudsman
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